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SUBJECT: ANTI-CORRUPTION PROGRAMS

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11. (SBU) Summary: In response to President Medvedev's rhetoric about the rule of law and anti-corruption, the Embassy's Law Enforcement Section (LES) and Resident Legal Adviser (RLA) conducted two programs last week focused on strengthening Russia's capacity to combat corruption. The first, a roundtable at Moscow State University, addressed corporate criminal liability, an important tool in combating corruption, white-collar crime and organized crime. The second, a training program for 70 Russian prosecutors, focused on the skills needed to draft and argue motions in criminal cases, with a special focus on corruption prosecutions. While the programs advanced the ball on both issues, they also highlighted the obstacles that Medvedev will face in combating corruption. End Summary.

CORPORATE CRIMINAL LIABILITY

12. (SBU) Legal provisions allowing for the criminal prosecution of corporate entities are an important component of any anti-corruption program. For example, the UN Convention Against Corruption (UNCAC) requires that member states pass legislation sufficient to hold corporations liable for corruption offenses and several other international conventions contain similar recommendations. Moreover, certain crimes, such as foreign bribery, commercial bribery, restraint of trade, money laundering and environmental offenses, are committed almost exclusively by corporations, and the absence of corporate criminal liability makes it exceedingly difficult to prosecute such cases.

13. (SBU) Currently, Russian law provides only for administrative, rather than criminal, liability for corporations, a remedy which appears completely inadequate. For example, punishments are limited to small fines, insufficient to deter businesses from potentially lucrative wrongdoing. Moreover, the absence of criminal liability means that almost no criminal cases are brought under Russia's environmental and restraint of trade statutes and hampers IPR enforcement, as many pirate organizations, such as the website www.allofmp3.com, operate through corporate entities. (In the U.S., by contrast, corporations are regularly prosecuted for all of these offenses. More importantly, knowing that a violation could result in an indictment, most companies have implemented rigorous internal compliance programs to prevent violations in the first place.)

14. (SBU) To promote discussion of a possible amendment to Russian law, on May 30, LES held a seminar at Moscow State University for approximately 100 Russian criminal law scholars and practitioners. Anatoly Naumov, one of Russia's most famous criminal law scholars, began the program by discussing the history of debates in Russia

over this subject and explained that a similar proposal in the 1990s had been defeated by traditionalists who argued that a corporation cannot legally form criminal intent (a view that was abandoned in the U.S. and England in the middle of the 19th Century.) (N.B. A senior legal advisor in the Presidential Administration told RLA that, in fact, the proposal had been defeated because too many Duma Deputies use corporations to hide assets and launder money and could not risk subjecting them to criminal prosecution).

15. (SBU) After Naumov, U.S. representatives addressed the seminar. RLA spoke about the history of corporate criminal liability in the US. Ben Campbell, US Attorney for the Eastern District of New York, and one of the lead prosecutors from the Enron case, spoke about current US practice and new DOJ guidelines designed to prevent abuse. Adam Safwat, a prosecutor with DOJ's Fraud Section and one of DOJ's leading experts on international bribery spoke about corporate criminal liability in Europe. Finally, a representative of the Business Software Alliance (BSA) spoke about the importance of corporate criminal liability in combating intellectual property violations and discussed recent legislative amendments in Latvia. Other speakers discussed corporate criminal liability in France and Lithuania.

16. (SBU) These presentations were followed by an open discussion in which Russian experts argued vehemently among themselves about whether corporate criminal liability could be introduced in Russia. Some took the position that such a revision is long overdue and resolved to draft proposed amendments and submit them to the Duma. Others passionately supported the traditional view that a corporation cannot form criminal intent. Still others argued that the structure of the Russian court system, in which cases involving corporations are heard in the commercial arbitrazh courts, cannot

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accommodate criminal cases against corporations and pointed out that such an innovation would require a major revision of the court system. On the whole, the discussion highlighted the extent to which formalistic jurisprudence and complicated court structures will continue to pose an obstacle to serious legal reform.

PROSECUTORIAL TRAINING

17. (SBU) Immediately after the corporate criminal liability program, RLA conducted a week long training program for 70 Russian prosecutors at the St. Petersburg Procuracy Training Institute. The program focused on drafting and arguing motions in criminal cases, a task which Russian prosecutors often perform extremely poorly, doing little more than ritualistically invoking statutory language with little supporting argumentation or evidence.

18. (SBU) The program was significant in that it brought together a number of top U.S. and Russian prosecutors as instructors. U.S. instructors included the Chief of the Securities Fraud Unit of the New Jersey U.S. Attorney's Office; a New York prosecutor currently prosecuting a mob boss who solicited the murders of a federal judge and a federal prosecutor; a distinguished Wisconsin prosecutor with thirty years experience; and a federal magistrate judge with extensive federal prosecutorial experience.

19. (SBU) Russian instructors included the head of the General Procuracy Public Prosecution Section; one of the prosecutors from the famous Tri Kita (Three Whales) case, a major corruption and smuggling case which has figured prominently in the siloviki wars; a prosecutor from the so-called Werewolves in Uniform case, which involved the prosecution of police officers who were operating a racketeering and extortion gang within the police; and a prosecutor who recently convicted several members of a notorious murder for hire gang. (In other joint training programs, Russian instructors have usually been academic lecturers, rather than prosecuting prosecutors, and as far as we are aware, this is the first time that so many high profile Russian prosecutors have participated in any prosecutorial training program.)

¶10. (SBU) Following a format that has proven successful in other LES training programs, Russian and U.S. instructors lectured in pairs on various skills, included drafting written motions, arguing motions in court and drafting and arguing appeals. These lectures were followed by demonstrations in which instructors simulated situations drawn from real cases to illustrate how they would argue a particular motion. The demonstrations were followed by work in breakout groups in which students practiced the relevant skills and received critique from both Russian and U.S. instructors and other students. The program concluded with a mock proceeding in which students played the prosecutors, defense lawyers and witnesses. A practicing judge from St. Petersburg District Court presided.

¶11. (SBU) Throughout, the program emphasized the skills needed to prosecute corruption cases, as most of the case demonstrations drew on situations from real corruption and white collar cases and the mock trial drew on a real case involving the prosecution of two Customs officers who extorted a bribe from a businessman in order to let a shipment of furniture clear Customs. The program proved highly successful. Students who, at the beginning of the week, appeared nervous and inarticulate speaking in court situations, were, by the end of the week, arguing motions forcefully and persuasively. Student reviews were uniformly enthusiastic and the General Procuracy has asked RLA to do a repeat program in Irkutsk for prosecutors from Siberia and the Far East.

AN UPHILL BATTLE

¶12. (SBU) Although the program was successful and the Procuracy appears to committed to continuing to work with us in this area, it also contained disturbing indications of just how widespread corruption is in the Russian legal system and the obstacles that Medvedev will have to overcome in combating corruption. For example, one of the Russian prosecutors boasted to RLA about how he collects blackmail material on judges to coerce them into reversing what he termed illegal decisions. (Although he claimed this was a necessary anti-corruption measure, it is clearly illegal and contains enormous potential for abuse. Moreover, his claims do not appear to be idle. In one academic survey, 11% of Russian judges said that they had been pressured to reach certain decisions in cases. 75% of them said that the pressure had come from prosecutors.) He also openly admitted to Qmaking problemsQ for witnesses who try to change their testimony at trial.

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¶13. (SBU) Similarly, in one of the breakout groups, a Russian prosecutor proposed (only half-jokingly) altering a document in response to a defense motion to exclude it, a comment which prompted a question to RLA as to whether American prosecutors QalsoQ engage in this practice. In the mock trial, one student created a scenario in which the defendant offered fabricated evidence, which drew applause from the audience members, suggesting that the practice is quite common. (This reaction appears to be justified. According to the survey cited above, 30% of Russian defense lawyers admitted to knowingly presenting false information in court, while 50% said that they thought it was acceptable to offer evidence of dubious origin.)

RUSSELL